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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 30/2018 concerning Bahaa Adel Salman Mattar and Maher Atieh Othman Abu Shawareb (United Arab Emirates)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 18 January 2018 the Working Group transmitted to the Government of the United Arab Emirates a communication concerning Bahaa Adel Salman Mattar and Maher Atieh Othman Abu Shawareb. The Government replied to the communication on 19 March 2018. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Bahaa Adel Salman Mattar is a citizen of Jordan, born in 1981, working as an information technology professional and living in Abu Dhabi, United Arab Emirates.

5. Maher Atieh Othman Abu Shawareb is also a citizen of Jordan, born in 1981, working as an information technology professional and living in Abu Dhabi, United Arab Emirates. Reportedly, Mr. Mattar and Mr. Abu Shawareb are colleagues.

6. According to the information provided by the source, Mr. Mattar was arrested on 14 October 2015 from his workplace at the offices of Al Rowad IT Solutions. Mr. Abu Shawareb was arrested on 30 October 2015 at his home. They were both deprived of their liberty without any arrest warrant and without being informed of the reasons for their detention. Both arrests were conducted by armed members of the State security forces, wearing civilian clothing and masks. The officers also searched their houses and seized documents and electronic devices, without a judicial order. After the arrests, both individuals were transferred to an unknown location where they were detained secretly for three months, allegedly in a situation of enforced disappearance.

7. The source submits that during their secret detention, they were interrogated under both physical and psychological torture. Mr. Mattar was reportedly stripped of his clothes and beaten all over his body, forced into stress positions for hours and threatened with harm to his family, whose fate was unknown to him. As for Mr. Abu Shawareb, the source claims that he was beaten to the point of unconsciousness, threatened with rape and prevented from taking his medication (he was taking medication for depression and following eye surgery). As a result of the severe injuries sustained under torture, Mr. Abu Shawareb had to be repeatedly transferred to the hospital for urgent care, and he underwent three operations.

8. Mr. Mattar and Mr. Abu Shawareb were reportedly coerced to sign confessions while being blindfolded. Both were allegedly told that they would be released only after signing the paper handed to them.

9. In February 2016, more than three months after their arrest, both men were reportedly transferred to Al Wathba prison in Abu Dhabi. For the first time, they were allowed to call their families and inform them of their whereabouts. On that occasion, they reported the acts of torture they had been subjected to at the hands of the State security forces and reported that they had been denied access to a lawyer. They also reported that they had not been brought before a judicial authority since their arrest.

10. The source also reports that the detainees' families were subjected to acts of intimidation and harassment in retaliation for their repeated attempts to obtain information about the fate and whereabouts of their relatives. After Mr. Abu Shawareb was detained, his brother approached the Criminal Investigative Directorate and local courts to request information on his fate and whereabouts, to no avail. As a consequence, he was arrested by the State security forces, interrogated for several hours, threatened and forced to sign a statement he was not allowed to read. Subsequently, Mr. Abu Shawareb's family left the United Arab Emirates out of fear. In November 2015, the authorities banned Mr. Mattar's family from the country, giving them short notice to leave the territory. In September 2016, after Mr. Mattar's uncle visited the detainee, he was threatened and ordered never to go back.

11. According to the source, in mid-May 2017, more than a year and a half after their arrest, the two men were brought before the public prosecutor for the first time, and charged. Their joint trial began shortly afterwards, before the Federal Court of Appeal. During the hearings, the victims repudiated the confessions they had made under torture. However, as State security officers were present and out of fear of reprisals, they could not speak freely about the acts of torture they had been subjected to. Despite their claims, their coerced self-incriminating statements were admitted as evidence and no investigation was ordered into their allegations.

12. Allegedly, both defendants were only allowed to appoint a lawyer in July 2017, once the trial had already begun. The trial hearings were held in camera. The defendants and their lawyers were reportedly not allowed to challenge the incriminating evidence nor to present any exculpatory evidence.

13. The source reports that, on 26 December 2017, Mr. Mattar and Mr. Abu Shawareb were convicted by the Federal Court of Appeal on terrorism-related charges and sentenced to 10 years' imprisonment and a fine of 1 million dirhams. The family was not informed of the precise charges under which they were sentenced. However, according to the source, media outlets indicated that they were convicted of "setting up pages on social media to promote the ideology of terrorist organisations by publishing articles, information, photos, videos and electronic documents, which jeopardise the interests" of the United Arab Emirates.[1] Those charges are reportedly criminalized under both article 34 of the anti-terrorism law and article 26 of the cybercrime law.

14. Reports from the source indicate that the authorities have failed to inform the respective families of the exact nature of the criminal charges or of the legal proceedings, despite repeated requests made on their behalf by the Jordanian Embassy in the United Arab Emirates.

15. The source submits that the deprivation of liberty of both individuals is arbitrary, falling under categories I and III of the categories applicable to cases submitted to the Working Group.

Category I

16. With regard to category I, the source claims that Mr. Mattar and Mr. Abu Shawareb were arrested without any warrant, nor were they given any reasons for their arrest; they were subsequently held in secret detention for more than three months, thus placing them outside the protection of the law. It is also submitted that the security forces which carried out the arrest act with absolute freedom, as they are under the direct control and orders of the Ministry of the Interior and are not subject to any judicial oversight. Moreover, the two individuals were presented to the public prosecutor and informed of the charges against them only in mid-May 2017, more than a year and a half after their arrest. Their detention from the onset of their arrest to May 2017 was allegedly without any legal basis, and the source argues that it constitutes a violation of article 9 of the Universal Declaration of Human Rights.

Category III

17. With regard to category III, the source states that Mr. Mattar and Mr. Abu Shawareb were brought before a judicial authority, i.e. the public prosecutor, a year and a half after their arrest. They were not allowed to exercise the right to challenge the lawfulness of their detention. In addition, from the onset of their detention and until an advanced stage of the trial, Mr. Mattar and Mr. Abu Shawareb were denied access to legal counsel. They were interrogated without the presence of a lawyer and they were unable to adequately prepare their defence. Moreover, the defendants' lawyer was not allowed to examine the evidence used to incriminate them or present any exculpatory evidence.

18. Furthermore, the source argues that by denying the detainees any contact with the outside world and by refusing to divulge the whereabouts and the conditions of the detainees to their relatives, the authorities inflicted severe suffering on the victims and their families amounting to a violation of the absolute prohibition of cruel, inhuman or degrading treatment. Also, while held in secret detention, Mr. Mattar and Mr. Abu Shawareb were subjected to severe acts of torture in order to extract self-incriminating statements. Both defendants were forced to sign statements without being allowed to read them beforehand. Mr. Mattar and Mr. Abu Shawareb informed the judge that they had been forced to sign the confessions extracted under duress; the court nevertheless admitted the self-incriminating statements as evidence.

[1] Abdulla Rasheed, "Emirati gets 15-year jail term for spying for Iran", Gulf News, 26 December 2017.

19. Finally, the source claims that the Federal Court of Appeal, which has been assigned primary jurisdiction to try cases of national security under Federal Law No. 11/2016, is composed of judges directly appointed by the Ministry of the Interior. As such, it is under the control of the executive branch of the Government and cannot be considered as independent or impartial. The source therefore submits that the trial of Mr. Mattar and Mr. Abu Shawareb was characterized by grave violations of minimum due process and fair trial guarantees, in contravention of articles 10 and 11 of the Universal Declaration of Human Rights, giving their deprivation of liberty an arbitrary character under category III.

Response from the Government

20. On 18 January 2018, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information before 19 March about the current situation of Mr. Mattar and Mr. Abu Shawareb and any comments which it might have on the source's allegations.

21. The Government submitted its response to the regular communication on 19 March 2018. According to the Government, Mr. Mattar and Mr. Abu Shawareb were arrested on 14 October 2015 and 30 September 2015 respectively, in accordance with the laws of the United Arab Emirates, after being informed by officials of the reason for their arrest and the presentation of arrest and search warrants, which they were able to read in detail and understand. Their families were informed of the location that they were taken to in Abu Dhabi and each knew that, to safeguard his rights, he could contact his family during his detention in the State Central Private Prison.

22. In the Government's view, the source's claims are not backed by the evidence but are based solely on hearsay. The laws of the United Arab Emirates guarantee the rights of detainees without discrimination and proscribe assaults and abuses on their physical integrity.

23. The Government further maintains that Mr. Mattar and Mr. Abu Shawareb were not held in secret detention, as evidenced by the fact that they were presented to the court. Neither filed any complaint with the public prosecutor, the court or their lawyer, Mohammed Al-Breiki, about allegations of torture, ill-treatment or arbitrary detention.

24. Mr. Mattar and Mr. Abu Shawareb were referred to the public prosecutor on 28 December 2015, and the public prosecutor in turn referred their case to the competent court on 24 May 2017. On the same day, Mr. Mattar was charged with being a member of the Islamic State in Iraq and the Levant (ISIS), creating social media accounts favourable to ISIS aimed at spreading the ISIS ideology and spreading favourable information that promoted the ISIS ideology; Mr. Abu Shawareb was charged with attempting to join ISIS, creating social media accounts to spread and promote the ISIS ideology and planning a terrorist attack.

25. The Government claimed that Mr. Mattar and Mr. Abu Shawareb were able to appoint a lawyer, Mohammed Al-Breiki, and meet with him for the purpose of preparing their defence. They were informed of the charges against them, as the charges were publicly pronounced in court. The judge also gave them permission to comment on the charges against them during the hearing, as evidenced by the fact that they had access to the case file. All the guarantees of defence before a court were observed in arrangement with their lawyer, Mohammed Al-Breiki.

26. On 26 December 2017, the Abu Dhabi Federal Court of Appeal delivered its judgment in a public hearing that was attended by Mr. Mattar and Mr. Abu Shawareb, their lawyer and relatives and Jordanian diplomats. They were each given a 10-year prison term with expulsion from the United Arab Emirates after serving their sentence. The Court also ordered the seizure of the devices used to commit their crimes.

27. According to the Government, the source's submissions are without merit and lack genuine evidence. Mr. Mattar and Mr. Abu Shawareb were not detained arbitrarily, held in solitary confinement, tortured or threatened with life imprisonment. This is evidenced by

the fact that they were presented to the court that determines the appropriate punishment for the crimes committed.

28. The Government states that Mr. Mattar and Mr. Abu Shawareb were tried before a competent, independent and impartial tribunal on two instances. The law guarantees their right to appeal their sentences before the Supreme Federal Court. Mr. Abu Shawareb appealed his sentence to the Supreme Federal Court and a hearing scheduled for 12 March 2018.

29. The Government also adds that Mr. Mattar and Mr. Abu Shawareb have been in continuous contact with their relatives. Mr. Mattar has been visited by his uncle, Iyad Salman Selim Mattar, while Mr. Abu Shawareb has been visited by his mother, Maryam Khalil Mohammed Abu Shawareb, his two sisters, Nisreen and Sohair Attieh Abu Shawareb, and his brother, Hani Atteih Abu Shawareb, in accordance with the procedures of penal facilities.

30. According to the Government, Mr. Mattar and Mr. Abu Shawareb have received the necessary medical care, their health being monitored at one of the State hospitals, and are subject to periodic medical check-ups. Mr. Mattar has been taken to a dermatologist for the necessary check-ups and administration of medications while Mr. Abu Shawareb has been sent to the eye clinic in Mafraq Hospital for the necessary check-ups and X-ray tests and to specialized clinics for scheduled appointments. Both have the right to be presented before a doctor when medical intervention is required.

31. The Government claims that Mr. Mattar and Mr. Abu Shawareb have been imprisoned on the basis of a court order. The penal facility where they will serve their 10-year sentences meets all the standards required to ensure the physical integrity of prisoners in terms of the environment, ventilation and air conditioning.

32. The crimes committed by Mr. Mattar and Mr. Abu Shawareb pose a danger to State security, are of a terrorist nature and disrupt public order. The Government has the power to preserve its security and stability and the safety and security of all those within its territory.

33. On 26 March 2018, the Government submitted additional information concerning Mr. Abu Shawareb. According to the Government, Mr. Abu Shawareb acquired ammunition for firearms without permission from the competent authorities and acquired digital photographs, video clips and documents that promoted and endorsed ISIS and could be shown to others.

Discussion

34. The Working Group thanks the source and the Government for their extensive engagement and for their submissions in relation to Mr. Mattar's and Mr. Abu Shawareb's detention.

35. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

36. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international or regional instruments.[2] Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group must assess whether such detention is also consistent with the relevant provisions of international

[2] See also General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9.

human rights law.[3] The Working Group considers that it is entitled to assess the proceedings of a court and the law itself to determine whether they meet international standards.[4]

Category I

37. The Working Group will consider whether there have been violations under category I, which concerns deprivation of liberty without invoking any legal basis.

38. According to the information provided by the source, Mr. Mattar and Mr. Abu Shawareb were arrested without a warrant and were not promptly informed of either the reasons for their arrest or of the charges against them. While the Government states that Mr. Mattar and Mr. Abu Shawareb were arrested in accordance with the law and due process and that their families were informed of their place of detention and were able to visit and communicate with them, it failed to substantiate its claims in order to refute the prima facie allegations put forward by the source. The Government has offered no documentary evidence, such as a copy of the arrest warrant, visitation logs or telephone records.

39. The Working Group notes that any deprivation of liberty without an arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks any legal basis, in violation of articles 3 and 9 of the Universal Declaration of Human Rights[5] as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[6]

40. The Working Group underlines that the right to liberty and security of the person, enshrined in article 3 of the Universal Declaration of Human Rights, applies to everyone and is further guaranteed through article 9, which prohibits arbitrary arrest and detention. Both provisions are deeply entrenched human rights norms, reflected in both State practice and the jurisprudence of international judicial bodies and the Working Group.[7] Prohibition of arbitrary detention is part and parcel of customary law, which bears an absolute character in international law and is therefore binding upon all States, irrespective of their treaty obligations. Arbitrary detention is also in contravention of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex).[8] The Working Group notes the statement made by the International Court of Justice that "wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights".[9]

41. In addition, for the purposes of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring

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[3] See opinions No. 1/1998, para. 13; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 76/2017, para. 49; and No. 94/2017, para. 47.

[4] See opinions No. 33/2015, para. 80; No. 76/2017, para. 50; No. 83/2017, para. 60; No. 88/2017, para. 24; and No. 94/2017, para. 48.

[5] See also article 14 (1) of the Arab Charter on Human Rights.

[6] See opinions No. 48/2016, para. 48; No. 21/2017, para. 46; 63/2017, para. 66; and No. 76/2017, para. 55.

[7] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, para. 65; and ibid., Separate Opinion of Judge Cançado Trindade, paras. 107–142. See also opinions No. 30/2011, para. 18; No. 31/2011, para. 16; No. 33/2011, para. 16; No. 41/2011, para. 15; No. 42/2011, para. 21; No. 43/2011, para. 16; No. 44/2011, para. 18; No. 45/2011, para. 21; No. 22/2012, para. 44; No. 53/2012, para. 20; No. 14/2014, para. 18; and No. 76/2017, para. 56.

[8] See deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44, sect. III), paras. 42–51. See also A/HRC/30/37, para. 11, as well as opinions No. 15/2011, para. 20; No. 16/2011, para. 12; No. 63/2017, para. 51; and No. 76/2017, para. 56.

[9] See *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3, para. 91.

Proceedings Before a Court, deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with procedures established by law.[10] In order to ascertain such legal basis, the authorities must present the charges when a person is arrested and detained, which did not happen in the present case. In the absence of an arrest warrant and information about the charges, it would be difficult to challenge the lawfulness of detention.

42. The source has also alleged, and the Government has failed to refute with documentary proof, that Mr. Mattar and Mr. Abu Shawareb were held incommunicado in a secret location by the State Security Department for three months, which placed them outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.[11] The Working Group also refers to the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42).

43. Incommunicado detention in a secret location also prevented Mr. Mattar and Mr. Abu Shawareb from being brought promptly before a judge or other officer authorized by law to exercise judicial power and from taking proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention.[12]

44. The Working Group therefore considers that the arrest and prolonged incommunicado detention of Mr. Mattar and Mr. Abu Shawareb by the State Security Department lack any legal basis and may amount to torture, in violation of articles 3, 6 and 9 of the Universal Declaration of Human Rights and principle 2 of the Body of Principles. The Working Group thus concludes that their detention is arbitrary, falling within category I.[13]

Category III

45. The Working Group will now consider whether the alleged violations of the right to a fair trial and due process suffered by Mr. Mattar and Mr. Abu Shawareb were of such gravity as to give their deprivation of liberty an arbitrary character, thus falling within category III.

46. As noted above, Mr. Mattar and Mr. Abu Shawareb were arrested without a warrant and were not promptly informed of either the reasons for their arrest or of any charges against them. They were also held incommunicado in a secret location for a period of three months.

47. The Working Group is concerned that the incommunicado detention of Mr. Mattar and Mr. Abu Shawareb also entailed the denial of their right to notify and communicate with their families and lawyer, in accordance with principles 15–19 of the Body of Principles, and their right to be brought promptly before a judge and to be tried within a reasonable time, as stipulated in principles 37 and 38 of the Body of Principles.

48. The Working Group is also of the view that prolonged solitary confinement is prejudicial to the right to a fair trial and is in violation of articles 10 and 11 of the Universal Declaration of Human Rights.

49. The Working Group also notes with grave concern that Mr. Mattar and Mr. Abu Shawareb have been subjected to a continued practice of torture; that they were coerced to sign confessions while being blindfolded; and that their self-incriminating statements were admitted as evidence and no investigation was ordered into their allegations. Such practices constitute violations of articles 5, 6 and 9 of the Universal Declaration of Human Rights.[14] In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[10] See A/HRC/30/37, para. 12.

[11] United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 22.

[12] See, for example, opinions No. 53/2016 and No. 56/2016.

[13] See opinions No. 39/2016, para. 45; No. 17/2017, para. 37; No. 21/2017, para. 37; No. 63/2017, para. 53; and No. 76/2017, para. 61.

[14] See also articles 8, 22, 13 and 14 of the Arab Charter on Human Rights.

50. Furthermore, the Working Group finds that the denial of adequate time and facilities to Mr. Mattar and Mr. Abu Shawareb for the preparation of their defence and communication with their legal counsel and the denial of a chance to challenge the incriminating evidence and to present any exculpatory evidence constitute a violation of principles 17 (1) and 18 (1), (2) and (3) of the Body of Principles and of principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

Right to consular assistance

51. The Working Group notes that the Government appears not to have fully implemented the formal procedures necessary to establish the legal basis for the arrest and detention of a foreign national under the provisions of article 36 of the 1963 Vienna Convention on Consular Relations, to which the United Arab Emirates is a party.

52. Article 36 (1) (b) of the Convention provides that a foreign national arrested or committed to prison or to custody pending trial or is detained in any other manner should be informed without delay of his or her rights to inform consular officers about his or her detention and to have any communication addressed to them forwarded without delay. This is in addition to the right of consular officers to be informed of the detention and to maintain communication (art. 36 (1) (b)) and their right to arrange for legal representation and to visit in person (art. 36 (1) (c)).

53. The Working Group notes that the General Assembly has emphatically reaffirmed the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, in particular with regard to the right of all foreign nationals, regardless of their migration status, to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention.[15]

54. Furthermore, the Body of Principles recognizes in principle 16 (2) the importance of consular assistance for a detained or imprisoned foreign national by specifically mentioning his or her right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he or she is a national.

55. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide, in rule 62, paragraph 1, that prisoners who are foreign nationals are to be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

56. Given the limited availability of remedies for individuals in the international sphere, consular protection is invaluable for foreign nationals who are disadvantaged by the lack of familiarity with the local law, customs and even language. Furthermore, it should be noted that the institution of consular protection not only serves the interests of the detained foreign individual and of the State that espouses such interests, but also furthers the interests of the international community as a whole by facilitating international exchange and reducing the potential for friction between States over the treatment of their nationals.[16]

57. In the light of the factual and legal considerations noted above, the Working Group considers that the Government's failure to respect Mr. Mattar's and Mr. Abu Shawareb's right to consular protection under customary international law, as codified in article 36 of the Vienna Convention on Consular Relations, during their initial arrest and detention, is in violation of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights and principle 16 (2) of the Body of Principles.

[15] See General Assembly resolution 72/179, para. 32. See also General Assembly resolutions 72/149, para. 4 (k) and 72/188, para. 15 (g); and Human Rights Council resolution 37/28, para. 2 (j).

[16] See opinion No. 58/2017, para. 64.

58. In the light of the foregoing, the Working Group concludes that the non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character, falling under category III.

59. The Working Group notes that the present opinion is only one of several opinions in which the Working Group has found the Government of the United Arab Emirates in violation of its international human rights obligations.[17] The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.[18]

Disposition

60. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Bahaa Adel Salman Mattar and Maher Atieh Othman Abu Shawareb, being in contravention of articles 3, 5, 6, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

61. Consequent upon the opinion rendered, the Working Group requests the Government of the United Arab Emirates to take the steps necessary to remedy the situation of Mr. Mattar and Mr. Abu Shawareb without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights.

62. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Mattar and Mr. Abu Shawareb immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

63. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Mattar and Mr. Abu Shawareb and to take appropriate measures against those responsible for the violation of their rights.

64. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights and the Optional Protocols thereto.

65. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Follow-up procedure

66. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Mattar and Mr. Abu Shawareb have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Mattar and Mr. Abu Shawareb;

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[17] See opinions No. 2/1998; No. 17/1998; No. 16/2002; No. 7/2004; No. 22/2004; No. 3/2008; No. 8/2009; No. 14/2010; No. 34/2011; No. 64/2011; No. 61/2012; No. 27/2013; No. 42/2013; No. 60/2013; No. 12/2014; No. 56/2014; No. 51/2015; No. 21/2017; No. 47/2017; No. 58/2017; and No. 76/2017. The Working Group expresses its particular concern at the spate of grave human rights violations, including arbitrary detention, following the 2011 Arab Spring.

[18] See article 7 (1) (e) of the Rome Statute of the International Criminal Court. The Working Group specifically alluded to this possibility vis-à-vis the United Arab Emirates in opinion No. 47/2017, para. 36.

(c) Whether an investigation has been conducted into the violation of Mr. Mattar's and Mr. Abu Shawareb's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the United Arab Emirates with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

67. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

68. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

69. The Government should disseminate through all available means the present opinion among all stakeholders.

70. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[19]

[*Adopted on 25 April 2018*]

[19] See Human Rights Council resolution 33/30, paras. 3 and 7.